

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ELDRICK BURLEY, #02170086

§

VS.

§

CIVIL ACTION NO. 6:21cv121

CAPTAIN KNOX, ET AL.

§

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Eldrick Burley, an inmate formerly confined within the Texas Department of Criminal Justice (TDCJ), proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On September 8, 2021, Judge Love issued a Report (Docket No. 13) recommending that Plaintiff's civil rights action be dismissed without prejudice for the failure to comply with an order of the Court. Specifically, Judge Love found that Plaintiff failed to file an amended complaint—or a detailed Rule 7 reply—no later than August 23, 2021. *See Johnson v. Johnson*, 395 F.3d 503, 529 (5th Cir. 2004). Plaintiff filed timely objections (Docket No. 14).

The Court reviews the findings and conclusions of the Magistrate Judge *de novo* only if a party objects within fourteen days of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a *de novo* review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending time to file objections from ten days to fourteen).

A party objecting to a Magistrate Judge's Report must specifically identify those findings to which he objects. Frivolous, conclusory, or general objections need not be considered by the District Judge. *See Nettles v. Wainright*, 677 F.2d 404, 410 & n.8 (5th Cir. 1982) (en banc). Furthermore, objections that simply rehash or mirror the underlying claims addressed in the Report are not sufficient to entitle the party to *de novo* review. *See U.S. v. Morales*, 947 F.Supp.2d 166, 171 (D.P.R. 2013) ("Even though timely objections to a report and recommendation entitle the objecting party to *de novo* review of the findings, 'the district court should be spared the chore of traversing ground already plowed by the Magistrate.'") (internal citations omitted).

Here, on objection, Plaintiff fails to address the substance of Judge Love's Report. In fact, Plaintiff's objections are difficult to decipher and do not highlight any issue with Judge Love's Report and Recommendation. The Court ordered Plaintiff to file an amended complaint or Rule 7 reply no later than August 23, 2021; to date, even after the Report, Plaintiff has not complied with that order. As explained to Plaintiff, the district court has both specific and inherent power to control its own docket "to control the disposition of the causes on its docket with economy of time." *See U.S. v. Colomb*, 419 F.3d 292, 299 (5th Cir. 2005).


The Court has conducted a careful *de novo* review of the record and the Magistrate Judge's proposed findings and recommendations. *See* 28 U.S.C. § 636(b)(1) (District Judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). Upon such *de novo* review, the Court has determined that the Report of the United States Magistrate Judge is correct and Plaintiff's objections are without merit. Accordingly, it is

ORDERED that the Report and Recommendation of the United States Magistrate Judge, (Docket No. 13), is **ADOPTED** as the opinion of the Court. Plaintiff's objections, (Docket No. 14), are **OVERRULED**. Further, it is

ORDERED that Plaintiff's civil rights lawsuit is **DISMISSED**, without prejudice, for the failure to comply with an order of the Court. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED** as **MOOT**.

So **ORDERED** and **SIGNED** this **27th** day of **October, 2021**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE